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March 28, 2007

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commissions  
445 – 12<sup>th</sup> Street, SW  
Washington, DC 20554  
Via ECFS

RE: Range Telephone Cooperative Inc.'s Petition for Waiver of the Commission's  
Universal Service Rules, CC Docket No. 96-45

Dear Ms. Dortch:

Enclosed please find Range Telephone Cooperative Inc.'s Petition for Waiver of  
the Commission's Universal Service Rules. In particular, Range is seeking a one-time waiver of  
Section 54.307(c).

Sincerely,

CHRISTIAN, SAMSON, JONES  
& CHISHOLM, PLLC



Jason B. Williams

JBW/lf  
enc.

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Range Telephone Cooperative, Inc.'s	)	CC Docket No. 96-45
Petition for Waiver of the FCC's	)	
Universal Service Rules	)	
	)	

**Range Telephone Cooperative, Inc.'s Petition for Waiver  
Of the Commission's Universal Service Rules**

Range Telephone Cooperative, Inc. ("Range"), by its attorneys and pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules<sup>1</sup> hereby requests a temporary waiver of section 54.307(c) of the Commission's rules. Due to initial confusion over the filing deadlines to submit working loop line count data to the Universal Service Administration Company ("USAC"), Range failed to timely file some of its fourth-quarter 2005 working loop count data pursuant to USAC requirements and FCC rules.<sup>2</sup> Range requests the FCC to issue a one-time waiver of this rule for Range and direct USAC to accept the late-filed data so that Range may receive the full amount of high cost universal service support as of March 21, 2006, its eligible telecommunications carrier ("ETC") effective date. For the reasons discussed below, good cause exists for the granting of a waiver in this instance.

**I. Introduction & Background**

Range is a small, facilities-based local exchange carrier serving rural parts of southeastern Montana and northeastern Wyoming. Range is also a competitive eligible

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. § 54.307(b) – (c).

telecommunications carrier (“CETC”) in the State of Montana providing service in Qwest Communications, Inc.’s (“Qwest”) service territory.<sup>3</sup> Range’s study area number is 489007. Range’s CETC business serves about 872 access lines in the town of Forsyth, Montana, a small town about 100-miles northeast of Billings, Montana. In addition to basic telecommunications services, Range provides advanced services, including DSL, throughout Forsyth. In fact, one of the primary reasons Range began offering competitive services in Forsyth is because the incumbent does not provide any advanced services in the area, including broadband.

Range was designated a CETC by the Montana Public Service Commission on March 21, 2006, in accordance with Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”). As a CETC, Range is eligible to receive Federal universal service support.<sup>4</sup> Pursuant to Commission rules, a CETC must file with USAC no later than July 31, September 30, December 30, and March 30 of each year, working line count data for the previous December 31, March 31, June 30, and September 30, respectively, in order to receive high-cost support for those quarterly periods.<sup>5</sup>

The quarterly, working line count data filing at issue in this petition is for high cost model (“HCM”) support for lines as of fourth-quarter 2005. Pursuant to the above-described FCC rules, Range was required to file its 4Q2005 HCM support line counts by July 31, 2006. On March 24, 2006 (three days after it received its CETC designation from the Montana PSC), Range submitted HCM support line counts as of September, 30, 2005, and interstate access support (“IAS”) line counts as of December 31, 2005. After

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<sup>3</sup> It should be noted that Range’s CLEC/CETC business is a cooperative, meaning that its CLEC/CETC customers are members of the cooperative.

<sup>4</sup> 47 U.S.C. §254(e).

<sup>5</sup> 47 C.F.R. § 54.307(b) – (c).

consulting with USAC, Range submitted on May 16, 2006, HCM support line counts as of March 31, 2005, June 30, 2005, and again for September 30, 2005. Range also submitted on May 16, 2006, IAS line counts as of June 30, 2005, September 30, 2005, December 31, 2005, and March 31, 2006. Based on conversations with USAC, Range also submitted on May 16, 2006, high cost loop (“HCL”) support, local switching support (“LSS”) and interstate common line support (“ICLS”) line count data for the periods of March 31, 2005, June 30, 2005, and September 30, 2005. Range submitted this information at USAC’s request even though it was not eligible to receive any HCL, LSS or ICLS funds. As indicated above, USAC requested that Range make multiple filings of the same information.

Range contacted USAC repeatedly inquiring whether it had received all information, including line count data, necessary for Range to receive support as of its CETC effective date. USAC repeatedly assured Range that it had. In fact, during May 2006 and June 2006, Range’s Chief Financial Officer, Robin Stephens, had multiple conversations with USAC personnel whereby USAC informed Mr. Stephens that Range had indeed filed everything needed to obtain support for the time period in question.

In the meantime, Range began receiving high cost support payments from USAC in October 2006. Specifically, on October 31, 2006, Range received payment of \$68,973, and on November 30, 2006, Range received payment of \$90,091. Range did not receive another high cost support payment until February 27, 2007, which was \$22,494—the current monthly support payment Range has received for the last three months. Range received no explanation from USAC as to what time period the October 31, 2006 and

November 30, 2006 payments were for. As it was a newly designated CETC, Range was unfamiliar with how USAC made payments to CETCs.

After Range began analyzing the October and November 2006 payments in comparison with its line count data, it thought that USAC had failed to provide the appropriate level of HCM support based on the number of lines Range had in service as of its CETC effective date. After multiple calls with USAC personnel, Range was told in late October 2006 that a mistake had been made and that USAC did not have all of the paperwork necessary for Range to receive all of its HCM support as of its ETC designation date. Upon notice from USAC that Range had not properly filed all of its line count data, Range immediately filed a revised data submission form with USAC reflecting its 4Q2005 HCM support line count data on November 9, 2006.

Range believes good cause exists for the waiver of the FCC's loop count data filing deadline because a mistake of fact was made. A denial of Range's petition for waiver would create undue hardship on Range and its customers. Range also believes good cause exists because the granting of a waiver in this instance will serve the public interest in assuring that the good people of Forsyth, Montana, have basic telecommunications services and have access to advanced telecommunications and information services.

## **II. Good Cause Exists To Grant Range's Request for Waiver of Section 54.307**

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.<sup>6</sup> The Commission may exercise its discretion in determining whether waiving a rule is appropriate based on the particular facts make strict compliance

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<sup>6</sup> 47 C.F.R. § 1.3.

inconsistent with the public interest.<sup>7</sup> In addition, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>8</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>9</sup>

Good cause exists to grant Range's petition because Range and its customers will undergo undue hardship if Range's waiver request is not granted. Absent its essential universal service funding, Range will bear an unreasonable and substantial financial burden for its provision of crucial, basic telecommunications service and access to broadband services in Forsyth.<sup>10</sup> Worse yet, Range may be forced to postpone its construction plans into the rural Forsyth exchange areas currently served by Qwest, which does not currently provide DSL service in the Forsyth area, has no plans for upgrading its plant, and has no plans for providing high-speed broadband services in Forsyth. Thus, strict compliance with the Commission's rules in this instance is inconsistent with the public interest enunciated in the Act.

Specifically, the Act states that one of the goals of universal service is to provide consumers in rural and high cost areas with access to all types of telecommunications services, including advanced telecommunications and information services.<sup>11</sup> If Range, the only company providing broadband in Forsyth, is denied its universal service funding, Forsyth's consumers would be at risk of not having access to advanced

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<sup>7</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>8</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>9</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>10</sup> Range is well-aware that broadband is not included in the definition of services eligible for universal service support. But if Range's petition for waiver is not granted and it loses its USF funding, it will be forced to spend nearly \$70,000 on basic services instead of investing that money in broadband network infrastructure.

<sup>11</sup> 47 U.S.C. §254(b)(3).

telecommunications and information services as Range would not have the necessary universal service support to make such services available.

Grant of Range's waiver petition will allow Range to continue to provide service in what has historically been the chronically underserved town of Forsyth and to continue to provide access to basic and advanced communications services. If Range's waiver petition is denied, Range will undergo undue hardship of having to use its own capital—capital intended to build out advanced services in the Forsyth exchange—to pay for basic services designed to be supported with USF dollars. Thus, denying funding to Range for an inadvertently missed line count deadline would have the affect of unnecessarily delaying service to underserved portions of rural America, namely Forsyth.

Denial of universal service support to Range for the period in question will mean Range will not receive approximately \$68,973 in Federal universal service support for its 872 access lines in Forsyth. This equates to nearly \$80 per line for the period at issue. In granting previous waiver orders, the Commission has found that a loss of support in the amount of \$6.86 per line would constitute significant hardship in rural, insular, and high-cost areas.<sup>12</sup> Such a substantial loss in funding for Range will undermine Range's investment in its network and thus its ability to ensure that customers have access to adequate services, in particular access to advanced telecommunications services like DSL. And because Range is the only provider of such services in Forsyth, consumers will be at risk of having no alternative to access broadband services.

Denying Range's request would be inconsistent with the underlying purpose of Congress's and the FCC's universal service policies and contrary to the public interest.

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<sup>12</sup> *Federal-State Joint Board on Universal Service Citizens Communication and Frontier Communications Petition for Wavier of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd. 16761, 16763 (rel. Oct. 27, 2005) (“*Frontier Order*”).

The USF was established to ensure all Americans have access to telecommunications, advanced telecommunications and information services.<sup>13</sup> This Commission, Congress and the President have all recognized the deployment of broadband as a national policy priority.<sup>14</sup> If Range's waiver petition is denied, the entire town of Forsyth could be at risk of not having any access to broadband services. This would be contrary to the Act and a giant step backwards in policymakers' collective attempt to ensure all of America has access to broadband services. Thus, Range's situation—i.e. being the only broadband provider in Forsyth—is a special circumstance that warrants deviation from the general rule. And such a deviation would serve the public interest, particularly for those living in Forsyth as they will continue to have quality telecommunications and access to broadband services.

Good cause for granting Range's waiver request also exists because Range received mis-information from USAC that Range had submitted all information necessary to receive HCM support as of its CETC effective date. In the past, the Commission has found that rules and policies are enforced, even where a party has received erroneous advice from a government employee (including from USAC employees), and the Commission is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employer, particularly when the relief

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<sup>13</sup> 47 U.S.C. § 254(b)(3).

<sup>14</sup> See, e.g. *Statement of Chairman Kevin J. Martin, Federal Communications Commission*, Before the Committee on Commerce, Science and Transportation, U.S. Senate, Feb. 1, 2007 (stating that broadband deployment has been the FCC's top priority); *Statement of Rep. Ed Markey (D-MA) to Consumer Federation of America*, Feb. 1, 2007 ([http://markey.house.gov/index.php?option=com\\_content&task=view&id=2577&Itemid=141](http://markey.house.gov/index.php?option=com_content&task=view&id=2577&Itemid=141)) (stating that the overarching goal of the House Subcommittee on Telecom's agenda is to fashion together a policy blueprint to make broadband service ubiquitous and affordable for every American); in April 2004, the White House issued a statement that it was the Bush administration's goal that "universal, affordable access for broadband technology by the year 2007" ([http://www.whitehouse.gov/infocus/technology/economic\\_policy200404/innovation.pdf](http://www.whitehouse.gov/infocus/technology/economic_policy200404/innovation.pdf)).



requested would be contrary to an applicable statute or rule.<sup>15</sup> But in this instance, Range was not relying on the opinion or advice from USAC. The issue in this instance is an excusable mistake of fact. Range repeatedly asked USAC if it had all of Range's paperwork, and USAC told Range that it had. In fact, USAC did not have all of Range's paperwork and did not inform Range until more than three months after the deadline by which Range had to file its 4Q2005 HCM line count data. Thus, Range could not have known that USAC had not received all of the relevant paperwork because USAC had told Range on several occasions that it had received everything needed. Thus, the grant of a waiver in this instance is not inconsistent with the Commission's previous findings that reliance on a USAC employee's advice or opinion is no excuse for failure to comply with Commission rules or statute because no advice or opinions were given; it was merely a mistake of fact.

The FCC has also found that a carrier's confusion and uncertainty regarding its line count filings constitutes good cause to waive the Commission's rules in order to allow a carrier to receive back-dated universal service support.<sup>16</sup> In Range's case, it was a new CETC and was confused by the numerous filings associated with its nascent CETC status and by the miscommunication with USAC relating to the paperwork that was filed. USAC was apparently confused, as well, as on multiple occasions it indicated that Range had filed all of the necessary paperwork but then subsequently informed Range that it had

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<sup>15</sup> See *Request for Review of the Decision of the Universal Service Administrator by Merced Union High School District, Merced, California*, File Nos. SLD-8404; SLD-9605; *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket No. 97-21, 15 FCC Red. 18803, 18805 (rel. Aug. 18, 2000);

<sup>16</sup> See *Federal-State Joint Board for Universal Service, united States Cellular Corporation Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Red. 12418 (rel. July 9, 2004).

not. Thus, good cause exists to grant a waiver of its 4Q2005 HCM support line count filing due to the initial confusion of both Range and USAC.

Range is fully cognizant of the consequences of missing a line count or any other USAC associated filing deadline. Range is also a rural ILEC that serves large portions of southeastern Montana and northeastern Wyoming that receives high cost universal service support. As a recipient of rural high cost support, Range has never missed a filing deadline. In previous waiver orders, the Commission has found that a carriers' longstanding history of submitting timely filed data weigh in favor of granting a waiver request.<sup>17</sup> Accordingly, the Commission should take into account Range's filing history as factor in considering this waiver petition.

For Range's ILEC business, failure to receive universal service support would be catastrophic. Accordingly, Range takes extra precautions to ensure it has properly filed all necessary paperwork with USAC. As described above, Range had a good faith belief that it had filed all necessary paperwork with USAC to receive funding as of its CETC effective date. That good faith belief was confirmed by USAC as it repeatedly told Range that it had received all of Range's necessary paperwork. But for this mistake of fact, confusion and miscommunication with USAC, Range would not have missed the 4Q2005 HCM support line count filing deadline. Range will continue to take extra precautions in the future to ensure all of the paperwork is timely filed with USAC for its CETC business.

Thus, good cause exists to grant Range's waiver request. Range has demonstrated that it and its customers will undergo undue hardship if the waiver is not granted. Range has also demonstrated that as the only provider of broadband services in Forsyth, special

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<sup>17</sup> *Frontier Order*, 20 FCC Red at 16746..

circumstances exist to grant a deviation from the general rule. More importantly, granting Range's request will be consistent with the public interest, the Act, and the national policy objective of broadband deployment.

### **III. Neither USAC or Other USF Recipients Will Be Burdened By a Grant of Range's Waiver Request.**

Granting Range's request for waiver will not burden USAC or any other universal service recipient. Upon notice from USAC that a mistake had been made, Range immediately filed its 4Q2005 HCM support line count data. Because USAC already has Range's line count information, USAC can easily calculate the amount owed to Range. Upon grant of this waiver, USAC can simply adjust Range's USF distribution to correct past amounts owing using its true-up process. The public interest benefits of Range's receipt of USF support outweighs any processing difficulties that USAC may face.

Additionally, other USF recipients will not be harmed by the grant of Range's requests. Other USF recipients will receive essentially the same amount of support regardless of whether the FCC grants Range's request due to the nominal nature of Range's support in comparison to the overall size of the high cost fund.

### **IV. Conclusion**

Good cause exists to grant Range's waiver petition. Absent a grant of this waiver request, Range will be forced with the possibility of delaying the deployment of network infrastructure which would have an adverse affect on the ability of people living in the town of Forsyth to have access to broadband services. Such results are contrary to, and inconsistent with, the policies and objectives of universal service. Based on the foregoing, Range respectfully request that the Commission grant Range a waiver of

Section 54.307(c) of the Commission's rules, as requested herein, and direct USAC to distribute to Range HCM support for the relevant time period.

Respectfully Submitted,  
Range Telephone Cooperative, Inc.

By: 

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Dated: March 28, 2007

## DECLARATION OF ROBIN STEPHENS

I, Robin Stephens, declare under penalty of perjury the following:

1. I am the Chief Financial Officer of Range Telephone Cooperative, Inc.
2. I have read the foregoing "Petition for Waiver of the Commission's Universal Service Rules." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.

*Robin Stephens*

CFO

3/28/07